

command and the necessity for operating anywhere in the world. It is the policy of the Department of the Army not to engage in the operation of industrial or commercial type facilities unless it can be demonstrated that it is necessary for the Government itself to perform the required work or service.

(2) *Definition.* Commercial and industrial type facilities are defined as those devoted to an activity which normally might be performed by private industry (except commissaries, post exchanges, and nonappropriated fund activities) including, but not limited to, warehouses, motor repair shops, bakeries, laundries, and drycleaning facilities.

(n) *Department of Defense policy relative to liaison with Governor of Commonwealth of Puerto Rico.* By letter dated August 19, 1953, the Secretary of Defense informed the Governor of the Commonwealth of Puerto Rico that the Department of Defense would establish liaison with the Governor to coordinate all military requirements for land acquisition in Puerto Rico. By memorandum dated August 19, 1953, the Secretary of Defense instructed that such liaison would be established under the direction of the Department of the Army, in coordination with the other interested services. On September 8, 1953, the Department of the Army requested the Commander in Chief, Caribbean Command, to establish such liaison. Liaison is being maintained locally between the Commandant of the Caribbean Sea Frontier and the Chairman of the Puerto Rico Planning Board. The liaison applies to the proposed acquisition of title or any interest in land which is other than (Federal) Government-owned land. In all cases, liaison action will be initiated during the advance planning or site selection stages. The purpose is to give Puerto Rican officials advance notice of military real property requirements and to give them an opportunity to suggest suitable alternatives in an effort to improve public relations with Puerto Rican officials, landowners, and the general public.

[27 FR 6140, June 29, 1962]

§ 552.35 Rights-of-entry for survey and exploration.

(a) *Voluntary.* Where it is necessary to enter upon non-Government-owned real estate during site selection, particularly for the purpose of conducting topographic surveys and test borings, the appropriate division or district engineer will negotiate rights-of-entry for survey and exploration. The instrument is in the nature of a license which does not convey an interest in land but precludes the entry from being a trespass. Since the entry is for a limited purpose and for a relatively short period of time, the landowner is not offered rental for the privileges requested. Where the landowner insists upon payment for the privileges requested, district engineers are authorized to negotiate short-term co-use leases, within the limits of existing regulations.

(b) *Involuntary.* Where rights-of-entry for survey and exploration or short-term co-use leases cannot be negotiated, the right-of-entry may be obtained through the institution of proceedings for the condemnation of a short-term co-use leasehold interest. This action is taken only where it can be shown that the entry is imperative and that it is impossible to negotiate a voluntary right-of-entry or short-term co-use lease.

§ 552.36 Rights-of-entry for construction.

(a) *When authorized.* Rights-of-entry for construction will be obtained by the district engineer only after a real estate directive or authorization to lease has been issued and then only when the construction schedule does not allow sufficient time to complete negotiations for an option to purchase or for a lease, as appropriate.

(b) *Involuntary.* Where a right-of-entry for construction cannot be negotiated, under the circumstances set forth in paragraph (a) of this section, a right-of-entry will be obtained through the institution of proceedings for the condemnation of fee title, an easement interest, or a leasehold interest, as appropriate.

Department of the Army, DoD

§ 552.37

§ 552.37 Acquisition by Chief of Engineers.

(a) *Statutory authority.* The Chief of Engineers, under the direction of the Secretary of the Army, is charged with the acquisition of all real estate for the use of the Department of the Army (10 U.S.C. 3038).

(b) *Scope of responsibility.* This authority is exercised by the Chief of Engineers, acting for the Secretary of the Army, in the acquisition of all real estate and interests therein for the use of the Department of the Army in continental United States, Territories, possessions, and the Commonwealth of Puerto Rico.

(c) *Delegated authority.* The Chief of Engineers or his duly authorized representative has authority to approve, for the Secretary of the Army:

(1) Fee, easement, and license acquisitions which do not exceed \$5,000 for any one parcel and which constitute small tracts of additional land needed in connection with projects for which final Department of the Army, Department of Defense, and/or Congressional approval has been obtained, or which constitute rights-of-way for roads, railroads, and utility lines necessary to the construction, maintenance, and operation of an approved project.

(2) Leasehold acquisition where the estimated annual rental for any single leasehold does not exceed \$25,000 and the acquisition is not controversial, unusual, or inconsistent with Department of Army policies.

(3) Renewal or extension of leaseholds.

(4) Acquisition by permit of the right to use real property of another Government department or agency, except as to "general purpose" space from the General Services Administration and the Post Office Department and all space in the metropolitan District of Columbia area.

(d) *Minor boundary changes.* The Chief of Engineers, in accomplishing acquisition in accordance with Department of Defense and Department of the Army policies and with real estate directives and authorizations to lease issued by the Secretary of the Army or his designee, is authorized to make minor boundary changes to avoid severance damages, by including or excluding

small tracts of land which will not decrease the usefulness of the area for the purpose for which it is being acquired.

(e) *Responsibility for all negotiations.* To avoid any possibility of misunderstanding by property owners and resultant embarrassment to the Department of the Army, under no circumstances will commitments be made either by negotiation or by dissemination of information to property owners, by any authority other than the Chief of Engineers. This is not intended to restrict the public notice and release of general information as set forth in § 552.34(h).

(f) *Approval of title.* The written opinion of the Attorney General, in favor of the validity of the title, will be obtained for any site or land purchased by the United States. Unless expressly waived by the pertinent authorization act or other act of Congress, this opinion will be obtained prior to the expenditure of public money upon such site or land (section 355, as amended, of the Revised Statutes; 50 U.S.C. 175) except:

(1) Easements acquired for military purposes. (By agreement with the Attorney General, his opinion is obtained only in acquiring easements at a cost in excess of \$100.)

(2) Leases and licenses.

(3) Jurisdiction of Government-owned land by transfer or use of Government-owned land by permit.

(g) *Furnishing title evidence.* The Chief of Engineers, acting under the authority of the Secretary of the Army, will procure any evidence of title required by the Attorney General. The expense of procurement, except where otherwise authorized by law or provided by contract, may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the Department of the Army (section 355, as amended, of the Revised Statutes; 50 U.S.C. 175).

(h) *Condemnation*—(1) *General.* Fee title, easements, or leasehold interests may be acquired by the exercise of right of eminent domain through the institution of condemnation proceedings. These proceedings are instituted in the United States District Courts by the Attorney General, based